
Appeal Decision

Site visit made on 31 March 2022

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th April 2022

Appeal Ref: APP/V2635/W/21/3287198

6 Common Lane, Southery, Downham Market PE38 0PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr J Everett against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 21/01509/O, dated 20 July 2021, was refused by notice dated 1 October 2021.
 - The development proposed is the construction of two 2 storey dwellings following demolition of existing substandard bungalow.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. The planning application was submitted in outline albeit with detailed matters of appearance, landscaping and scale reserved for later consideration. The application was accompanied by a Design and Access Statement and a Flood Risk Assessment (FRA)¹. The Local Planning Authority (LPA) determined the proposal on this basis, and I have done similar.
3. The main issue for this appeal is whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the development plan and National Planning Policy Framework (NPPF).

Reasons

4. The appeal proposal would replace an existing dwelling, but it would also result in a net additional dwelling at the site. The appeal site is within Flood Zones 2 and 3a, and an indicative Flood Zone 3b, as identified in the Borough Council's Strategic Flood Risk Assessment 2018/9 (SFRA)². Whilst the appeal site may be towards the northern edge of these zones, and just beyond the edge of the breach zone for fluvial flooding, it is nonetheless within an area with a high probability of risk of flooding. The overarching approach to planning and flood risk is to avoid inappropriate development in areas at risk of flooding by steering vulnerable development³ away from areas at highest risk. It is only after applying this sequential approach that consideration should be given, where necessary, to an exception test including matters such as wider sustainability benefits and the ability to make a development safe during its

¹ With an Addendum submitted to the LPA on 31 August 2021

² Appellant Statement of Case, Appendix A

³ Dwellings are identified as 'more vulnerable' at Annex 3 in the NPPF

lifetime. In my assessment, it is the proposed net additional dwelling which should be focus of the sequential test in this case.

5. In respect of the sequential test the Planning Practice Guidance (PPG) on 'Flood Risk and Coastal Change' advises⁴ that the applicant's FRA should provide the evidence for the LPA to apply the test. From the SFRA mapping before me, the vast majority of the settlement of Southery, including that encompassed within the LPAs defined development boundary for the village, is within an area of lower flood risk. The PPG advises that the sequential test area will be defined by local circumstances for the type of development proposed. As a 'rural village' tier in the settlement hierarchy, where some modest housing growth is envisaged, I consider it appropriate that the sequential test in this case is applied to the village of Southery and no wider. The appellant submits that there are few other sites available in the village⁵, but there is very little evidence before me to substantiate this, given the size and scale of the village. Correspondence with the LPA refers to planning consents for 8 dwellings elsewhere in Southery and whilst I have very few details about these, it would nonetheless appear to indicate reasonably available sites for the construction of new homes. Accordingly, it has not been satisfactorily demonstrated that there are no reasonably available sites appropriate for the proposed net additional dwelling in areas of lower flood risk in Southery.
6. The appellant places emphasis on various sustainability factors and the ability to make the development safe during its lifetime, having regard also to the availability of existing defences and climate change scenarios. Such matters are part of any subsequent exception test rather than the primary sequential test. The fact that the site is within the defined development boundary for Southery means that the proposed net additional dwelling would be a 'windfall' rather than a development purposefully allocated as part of the development plan. The location of the site within the development boundary does not negate the requirements of the sequential test.
7. Whilst the Environment Agency (EA) have withdrawn their objection upon the appellant's FRA addendum, they nonetheless state in their final correspondence of 21 September 2021 that the application of the sequential test remains a matter for the LPA, having regard to, amongst other things, the SFRA. This is consistent with the PPG advice⁶. As such the EA comment that being re-consulted on the FRA addendum it is "deemed" that the LPA is satisfied that the sequential test has been passed is not determinative. For the reasons set out above, the strict requirements of the sequential test, have not been satisfied in this case, irrespective of the EAs comments.
8. In terms of applying the sequential test, the appellant refers me to another example in the Borough at West Walton. The appellant seeks to draw comparison with the circumstances of the appeal proposal in terms of flood risk (albeit noting a higher risk of tidal inundation at West Walton), the availability of other sites in the settlement in lower flood risk areas and the location within the development boundaries. Whatever the LPAs approach in West Walton, noting the LPAs rebuttal that a fallback position existed at West Walton, I have assessed the appeal proposal on its own merits and the clear evidence that the sequential test, as it applies to the flood risk circumstances in Southery, has

⁴ Paragraph 7-030-20140306

⁵ Appendix C1 document & paragraphs 1.2 & 1.3 of the Appellant's Final Comments

⁶ Paragraph 7-034-20140306

not been met in this instance. Accordingly, the case at West Walton or the established housing constructed opposite the appeal site at Pringle Way in Southery⁷, do not provide a basis for approving the appeal proposal.

9. I therefore conclude that the appeal proposal does not satisfy the sequential test and so would not represent an acceptable form of development having regard to its flood zone location as identified in the SFRA. Accordingly, the appeal proposal would be contrary to Policy CS08 of the King's Lynn and West Norfolk Local Development Framework Core Strategy 2011. This policy, amongst other things, seeks to guide developments away from areas of high flood risk in accordance with the outputs of the SFRA. The proposal would also fail to accord with national planning policy on the sequential approach to planning and flood risk, notably at paragraphs 159-162 of the NPPF.
10. I have had regard to the appellant's submissions regarding the benefits of replacing the existing dwelling with flood resilient (safe) replacement properties and the sustainable location of the proposed dwellings. As set out above, given the basic vulnerability of a net additional dwelling in an area of high risk of flooding, the exception test cannot be considered unless and until the sequential test has been satisfactorily passed. On a wider planning assessment, the modest sustainability benefits of the scheme, would not amount to material considerations to indicate a decision other than in accordance with the development plan policy on flood risk.
11. I have taken into account all other matters raised, including the lack of objection from the Parish Council and others, but there is nothing that leads me to conclude other than the appeal should be dismissed for the reasons given.

David Spencer

Inspector.

⁷ Referred to in the bundle of planning application correspondence/exchanges between the appellant and LPA as being similarly located in Flood Zones 2 and 3a in the SFRA.